IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 210 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ESSAR STEEL LIMITED - Petitioner(s)
Versus
. - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/04/2007

ORAL JUDGMENT

This petition is filed by Essar Steel Ltd., under Section 78 and 100 to 103 of the Companies Act, 1956, seeking confirmation to the

scheme of capital reduction of the Company.

2. It is submitted in the petition that the petitioner company carries on the business of manufacturing of steel products such as HRC & HBI and it has recently pre-paid all the lenders under the Corporate Debt Restructuring Scheme (CDR). It is submitted that as part of the settlement it had to make payment of one time recompense charges to the lenders for accepting the prepayment of financial facilities given by them under the CDR Scheme. Similarly, the Company had entered into a Power Purchase Agreement in the year 1996 with Essar Power Limited for supply of power for 20 years. It is submitted that various fixed charges are required to be paid under the said Agreement. The debt balance of both these accounts comes to Rs. 191.43 crores (net of tax). It is submitted that the company has substantial balance in its Share Premium Account and therefore the Company has proposed to use its Share Premium Account in

order to adjust the aforesaid charges incurred by it. It is submitted that having regard to the substantial amount standing to the credit of Securities Premium Account of Rs. 1490.04 Crores as on 30.9.2006 it is proposed that in accordance with Section 78 read with Section 100 to 104 of the Companies Act, 1956, the credit balance of its Securities Premium Account may be utilized for writing off the extraordinary charges, to the extent necessary, not exceeding Rs. 191.43 crores. It is submitted that as a result, the Securities Premium Account shall stand reduced to Rs. 1298.61 crores with the proposed set off.

3. By a Special Resolution of the Company, duly passed in accordance with Section 189 of the Companies Act, 1956, at a general meeting thereof, held after due notice as provided in the Act on the 30th day of September 2006, it was resolved as follows:

“RESOLVED THAT pursuant to the provisions of

Section 78, 100 to 104 and other applicable provisions, the Companies Act, 1956, and enabling provisions in the Memorandum and Articles of Association of the Company, and subject to the confirmation of the jurisdictional High Court/Tribunal and/or any other regulatory authority as may be prescribed under the Companies Act, 1956 and subject to such conditions, modifications, as may be prescribed or imposed by any of the aforesaid authorities, while granting such approvals, permissions and sanctions, which may be agreed to by the Board of Directors of the Company, an amount not exceeding Rs. 191.43 crores (net of tax) out of the credit balance standing in Securities Premium Account of the Company as at March 31, 2006 be utilized for the adjustment against the debt balance of "Prepaid Power Charges" of Rs. 87.26 crores (net of tax) and "Recompense Charges" of Rs. 104.17 crores (net of Tax) with effect from 31st March 2006.

RESOLVED FURTHER THAT for the purpose of giving effect to the above Resolution and for removal of

any difficulties or doubts, the Board of Directors (which term shall include any Committee thereof or any person/persons that the Board may have constituted/nominated or hereinafter constitute/nominate to exercise it is powers, including powers conferred under this Resolution) be and is hereby authorised to do all acts, deeds, matters and things as it may, in its absolute discretion, deem necessary, expedient, usual or proper and to settle any question or difficulty that may arise with regard to utilization/adjustment of the Securities Premium Account or carry out such modifications/directions as may be ordered by the jurisdictional High Court/Tribunal to implement the aforesaid Resolution".

4. The petition was admitted by this Court on 27th November 2006 and the same was ordered to be advertised in Vadodara edition of "Indian Express", English daily and Surat edition of "Gujarat Mitra", Gujarati daily. The same

direction has been complied with by the company and the notice of the petition has been duly advertised in Vadodara edition of “Indian Express”, English daily on 2nd December 2006 and Surat edition of “Gujarat Mitra”, Gujarati daily on 1st December 2006. The same is confirmed by the affidavit dated 6th day of December 2006 filed by the Clerk of the learned advocate for the petitioner. Pursuant to the said advertisement one shareholder, Mr. R.B. Nagarsheth had raised some objections vide an affidavit dt. 10th December 2006, sent to the Hon'ble Court opposing the sanction to the proposed capital reduction. An additional affidavit dt. 2nd February 2007 is filed by Mr. N.B. Vyas on behalf of the petitioner company indicating that all the issues raised by the said shareholder are irrelevant and they deserve to be overruled. It has been submitted that a copy of the same was also served to the said objector. It is also brought to the notice of this court that the said objector vide a further affidavit dt. 23rd January 2007 has sought to withdraw the aforesaid objections.

5. It is further pointed out in the petition that the proposed reduction does not involve diminution of any liability or repayment of paid-up capital. In fact, there is no reduction proposed in the Equity Share Capital of the company. However, since the Securities Premium account forms the part of the capital in terms of Sec. 78 of the Companies Act, 1956, the utilization of the amount lying in this account needs to be treated as Reduction of Capital. The above proposal is not likely to have any adverse impact on the net worth of the Company for all practical purposes. In view of this, while admitting the petition this Court did not give any directions as required under Section 101(2) of the Act and the same are hereby dispensed with.

6. Heard Mrs. Swati Soparkar, learned advocate for the petitioner. Having perused the petition and more particularly the reasons given

in support of the proposed reduction and in my view there is no reason not to confirm the proposed action of the petitioner to reduce its capital in the form of utilizing its Securities Premium Account. Having considered the objections raised by one of the shareholders, explanation given by the company for the same, the same do not survive. Even otherwise as stated hereinabove, the sole objector vide further affidavit dated 23rd January 2007 has sought to withdraw the objections raised by him. The said proposal does not prejudicially affect any one as it does not involve extinguishments or diminution of the capital of the company nor does it involve pay off of any capital received by the Company. Accordingly the resolution dated 30th September 2006 is hereby confirmed.

7. The form of the minute proposed to be registered under Sec. 103(1)(b) is as follows:

MINUTE UNDER SEC. 103(1)

The Securities Premium Account of Essar Steel Limited is by virtue of a Special Resolution of the company dt. 30th September 2006 and by virtue of the sanction granted by the High Court of Gujarat on 4th April 2007, reduced from Rs. 1490.04 crores to Rs. 1298.61 crores. A Special Resolution of the company has been passed to the effect that upon the said reduction of the capital taking effect, an amount not exceeding Rs. 191.43 crores (net of tax) in aggregate out of the balance standing in the Securities Premium Account of the Company as at September 30, 2006 be utilized for the adjustment of the sum of Rs. 191.43 crores in aggregate comprising of Rs. 87.26 crores standing to the debit of Prepaid Power charges and Rs. 104.17 crores standing to the debit of Recompense charges, with effect from 31st March, 2006.

8. Thus, the prayers made in terms of Para 11(A), 11 (B) and 11(C) are hereby granted.

9. The petitioner is directed to publish the Notice of Confirmation of Reduction of Capital and approving of Minutes in the Vadodara edition of “Indian Express”, English daily and Surat edition of “Gujarat Mitra”, Gujarati daily, within 14 days of the registration of the order with the Registrar of Companies.

10. The petition is accordingly disposed of with no order as to costs.

[M.R. Shah, J.]

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